



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
2.210

CHAPTER Clients Rights	SUBCHAPTER Investigation Procedures	EFFECTIVE DATE 8-28-07	NUMBER OF PAGES 10	PAGE NUMBER 1 of 10
SUBJECT Abuse and Neglect Definitions and Procedures; Community Provider Facilities		AUTHORITY Sections 630.050		HISTORY SEE BELOW
PERSON RESPONSIBLE Department Deputy Director			Sunset Date 7-1-11	

Purpose: Prescribes procedures for reporting, investigating and processing reports and complaints of abuse, neglect and misuse of funds/property of Department of Mental Health (department) consumers in a residential facility, day program or specialized service that is licensed, certified or funded by the department.

Application: Applies to department employees.

(1) As used in this DOR, the following terms shall mean:

(A) "Class I neglect," failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any consumer when that failure presents either imminent danger to the health, safety or welfare of a consumer, or a substantial probability that death or physical injury would result.

(B) "Class II neglect," failure of an employee to provide reasonable or necessary services to a consumer according to the individualized treatment or habilitation plan, if feasible, or according to acceptable standards of care. This includes action or behavior which may cause psychological harm to a consumer due to intimidating, causing fear or otherwise creating undue anxiety.

(C) "Complainant," any person who files a complaint.

(D) "Complaint," allegation that class I neglect, class II neglect, misuse of funds/property, physical abuse, sexual abuse, or verbal abuse has occurred.

(E) "Consumer," individual receiving services from any facility operated by the department, and may also be referred to as client, resident or patient.

(F) "Disqualifying event," substantiated charge of either (a) one count of class I neglect, misuse of funds/property, physical abuse or sexual abuse; or (b) two counts of verbal abuse, two counts of class II neglect or one count of verbal abuse and one count of class II neglect within a twelve month period.

(G) "Events Management and Tracking (EMT)," the automated database maintained by the department to collect and analyze data related to events that have actual or potential adverse outcomes for consumers.

(H) "Events Management and Tracking form," department approved form to collect relevant data on events that have actual or potential adverse outcomes for consumers.

(I) "Inquiry," process of gathering facts surrounding an event, complaint or upon discovery of unknown injury to determine whether the incident or event is suspect for abuse or neglect.



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(J) Medications

1. "Medication Error," a mistake in prescribing, dispensing, or administering medications. A medication error occurs if a consumer receives an incorrect drug, drug dose, dosage form, quantity, route, concentration, or rate of administration. This includes failing to administer the drug or administering the drug on an incorrect schedule. Levels of medication errors are:

A. "Minimal medication error", is one in which the consumer experiences no or minimal adverse consequences and receives no treatment or intervention other than monitoring or observation;

B. "Moderate medication error", one in which the consumer experiences short-term reversible adverse consequences and receives treatment and or intervention in addition to monitoring or observation; and

C. "Serious medication error", one in which the consumer experiences life-threatening and/or permanent adverse consequences or results in hospitalization.

2. "Serious medication errors" may be considered abuse or neglect and shall be subject to investigation by the Department of Mental Health.

(K) "Misuse of funds/property," the misappropriation or conversion for any purpose of a consumer's funds or property by an employee or employees with or without the consent of the consumer.

(L) "Non-disqualifying event," substantiated charge of one count of verbal abuse or one count of class II neglect within a twelve month period.

(M) "Physical abuse,"

1. An employee purposefully beating, striking, wounding or injuring any consumer;

2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner. Physical abuse includes handling a consumer with any more force than is reasonable for a consumer's proper control, treatment or management.

(N) "Sexual abuse," any touching, directly or through clothing by an employee of a consumer for sexual purpose or in a sexual manner. This includes but is not limited to:

1. Kissing;
2. Touching of the genitals, buttocks or breasts;
3. Causing a consumer to touch the employee for sexual purposes;
4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation;
5. Failing to intervene or not attempting to stop inappropriate sexual activity or performance between consumers; and/or
6. Encouraging inappropriate sexual activity or performance between consumers.



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(O) "Report of physical, sexual or verbal abuse, neglect or misuse of funds/property," allegation of physical, sexual or verbal abuse, neglect or misuse of funds/property that are based upon reasonable cause to believe that the allegation has occurred.

(P) "Verbal abuse," an employee using profanity or speaking in a demeaning, non-therapeutic, undignified, threatening or derogatory manner to a consumer or about a consumer in the presence of a consumer.

(2) The head of the facility, day program, or specialized service that is licensed, certified or funded by the department shall record complaints received under 9 CSR 10-5.200 on the department EMT form. The head of the facility, day program or specialized service shall ensure that the form is completed thoroughly and accurately. All completed forms shall be immediately forwarded to the district administrator, regional center director or other department designee, who shall determine through an inquiry, if necessary, whether the complaint is based upon reasonable cause to believe that abuse or neglect has occurred.

(A) All complaints and reports of abuse and neglect shall be entered into the EMT database as inquiries by the district administrator, regional center director or other department designee within twenty-four (24) hours of the incident, or by the end of the next working day after the incident occurred, was discovered, or notification of the incident was received.

(B) The district administrator, regional center director or other department designee shall immediately refer all complaints and reports involving suspected physical, sexual or verbal abuse, neglect or misuse of funds/property for investigation to the investigations unit by submitting the department-approved form for initiating an investigation to the investigations unit. Medication related events are reportable under this subsection if they are serious medication errors.

(3) All department employees shall immediately report any complaints they receive or make a complaint themselves if they know through direct or indirect means that abuse or neglect has occurred or suspect that such has occurred. Employees who fail to report complaints of known or suspected incidents of abuse or neglect or any other misconduct as defined in this regulation are subject to discipline, criminal prosecution or both.

(4) Upon receiving a complaint the district administrator's office, regional center director or other department designee shall take the following actions:

(A) Take necessary action to protect the safety or welfare of department consumers, which may include removing department consumers from the facility or program or placing a monitor in the program or facility pending the inquiry or investigation. The head of the department supervising facility shall consult with the respective division director and the Office of General Counsel prior to removal of consumers, unless such prior consultation would endanger the safety or welfare of the



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consumers. If prior consultation is not practicable, the respective division director and Office of General Counsel shall be informed of the removal as soon as possible.

(B) Initiate an inquiry, if necessary, to determine whether there is reasonable cause to believe that abuse or neglect has occurred. The inquiry shall be completed within a reasonable time, not to exceed ten (10) working days, unless for good cause shown additional time is needed.

(C) Within five (5) working days after receiving the complaint, notice shall be sent by regular mail to the complainant acknowledging receipt of the complaint. The notice shall specify whether an investigation or inquiry has been initiated. Copies of the complainant notification shall be provided to the assigned investigator if an investigation is initiated. Notification shall be made as follows:

1. If the complainant is a minor, the notice shall be sent to the minor's parent(s) or guardian.

2. If the complainant has been adjudged incapacitated and has a guardian appointed pursuant to Chapter 475, RSMo, the notice shall be sent to the guardian.

3. If the complainant does not have a guardian, the notice shall be sent directly to the complainant. Notification is not required to be sent to an employee of a residential facility, day program or specialized service, which is licensed, certified or funded by the department, who initiates a complaint.

(D) Initiate or ensure that a physical examination of the consumer is performed by qualified medical staff as soon as practicable in all cases involving physical abuse or neglect resulting in injury. If there is reasonable cause to believe that sexual abuse has occurred and it included penetration, a physical examination shall be conducted immediately. The physical examination shall be performed by a medical professional at the facility qualified in the "rape kit" examination. If no qualified personnel are available at the facility, then the consumer shall be transported to a medical facility where an independent medical professional qualified in the "rape kit" examination shall perform the physical examination. The examinations provided for in this section shall take place with the consent of the consumer or guardian. In those cases where medical examination or intervention is necessary due to a serious life-threatening injury and the consumer is unable to provide consent or the guardian is unavailable to give consent, the medical examination or intervention may be performed without consent.

(E) Immediately notify by telephone, if possible, the parents of a minor consumer or the consumer's legal guardian of the nature of the injuries and the facts and circumstances surrounding the incident as they are then known, except the names of employees and other consumers shall not be disclosed, and the actions that have been taken or that are planned regarding the care of the consumer and the inquiry or investigation into the matter.

(F) The verbal notification to the parents or guardian shall be documented, which shall include the name of the person contacted, relation to the consumer, brief description of the information communicated and received along with the time and



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date of the contact. If the matter is referred for investigation, this contact notification shall be provided to the investigator assigned to the investigation.

(G) As soon as practicable following the phone contact, provide written notification to the parents or legal guardian of the information provided in subsection (E) above along with the current status of the matter. If the matter is assigned for investigation, then the written notification provided for in this section shall also be provided to the assigned investigator.

(H) Direct the facility, day program or specialized service to secure any evidence involved in the incident. Any area where an incident has occurred in which it is believed potential evidence may exist shall not be disturbed, until after the review by authorized personnel such as the assigned investigator, law enforcement officials, or medical or emergency personnel, and only with the approval of the district administrator or regional center director or designee in consultation with the assigned investigator.

(I) Ensure the facility, program or service has carried out the duties to report or to provide notification as set out in 9 CSR 10-5.200 (2)(C) and 3(A) through and including 3(C).

(J) Immediately report to local law enforcement officials any alleged or suspected:

1. Sexual abuse;
2. Abuse, neglect or misuse of funds/property if the district administrator or regional director or designee has cause to believe that the acts involve criminal misconduct; or
3. Abuse and neglect that result in physical injury.

(K) Copies of all notifications required in subsection (4)(J) shall be provided to the assigned investigator if an investigation is initiated.

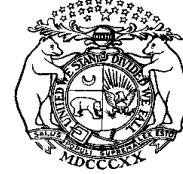
(5) After receiving the final investigative report, the district administrator, regional center director or other department designee shall, within ten (10) working days, do one of the following actions:

- (A) Request additional time to make a determination;
- (B) Request further investigation, in which case an additional ten (10) working days may be allowed to complete the investigation unless the parties agree for a longer period based upon the complexity of the case or other good cause. The request shall be on the department approved form and shall be submitted to the assigned investigator and his or her supervisor. A reasonable amount of time shall be permitted to complete the additional investigation;
- (C) If the report is unsubstantiated, inform the alleged perpetrator and provider by letter and enter the determination into EMT within one (1) working day of the determination and immediately submit a copy to the investigations unit; or
- (D) If the report is substantiated, the determiner shall send the alleged perpetrator by regular and certified mail a letter that shall contain:
 1. A summary of the conduct of the employee resulting in the determination;



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2. The definition of the substantiated charges;

3. Notice that the alleged perpetrator will be disqualified from employment as set forth in section (10) of this DOR, if a final determination of a disqualifying event is made; and

D. An offer to meet with the determiner in the matter within ten (10) working days of receipt of the letter.

(6) If the determiner (district administrator, regional center director, or department designee) has made a preliminary finding substantiating any prohibited conduct as set forth herein, then the alleged perpetrator may request a meeting with the determiner or designee or submit written comments within ten (10) working days of receipt of the letter.

(A) The meeting shall be held within ten (10) working days of the request for a meeting unless the parties mutually agree to an extension to a reasonable time period.

(B) Within ten (10) working days of the meeting, unless additional time is needed as a result of information obtained during the meeting, or if no meeting request was received within the ten-working-day period from the date of the preliminary determination, the determiner shall issue a final determination.

1. The alleged perpetrator shall be notified of this final determination by regular and certified mail and the provider that employed the alleged perpetrator shall be copied by regular mail.

2. The investigations unit shall be copied on all letters substantiating charges.

(C) If the report is substantiated, the determiner shall send the alleged perpetrator by regular and certified mail a letter that shall contain:

1. A summary of the conduct of the employee resulting in the determination;

2. The definition of the substantiated charges; and

3. If the final determination involves a disqualifying event, then the letter shall also contain:

A. Notification of appeal rights;

B. Notice that the alleged perpetrator will be disqualified from employment as set forth in section (8) of this DOR.

C. Notification to the alleged perpetrator that they have ten (10) working days from the receipt of the final determination to appeal to the department hearings administrator.

(D) There shall be no right to appeal to the department hearings administrator for any non-disqualifying event. The sole review available in cases of non-disqualifying events is a meeting with the determiner prior to the final determination as set out above. There shall be a right to an appeal before the department hearings administrator for perpetrators charged with two non-disqualifying events in a twelve month period.



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(E) The determiner shall enter the final substantiated determination into EMT, within one (1) working day of the final determination.

1. If the report is substantiated, the final determination form shall be immediately submitted to the investigations unit, accompanied by the following documentation:

A. Copies of the preliminary determination and final determination; and

B. Written documentation of the receipt of preliminary and final determination letters. This documentation may include the signature of the employee acknowledging receipt of the letter or a document signed by department staff that the employee refused to acknowledge receipt for the letters, but was served with the letters. Service may also be shown by delivery via regular and certified mail to the alleged perpetrator at his or her last known address. The alleged perpetrator's failure or refusal to receive the certified mail or registered receipt requested mail on three occasions to the last known address shall be deemed as proper service.

(F) If there is no appeal, the decision of the district administrator's office, regional center director's office or other department designee is final. The investigations unit shall add the perpetrator's name to the department's Disqualification Registry pursuant to section 630.170 RSMo for charges that comply with criteria in section (8)(A) and (B).

(G) Following final determination, substantiated non-disqualifying events shall be entered into the history file of EMT by the investigations unit.

(7) If the department hearings administrator or designee is contacted for an appeal, he/she shall notify the district administrator's office, regional center director's office or other department designee, and the determiner.

(A) The hearing shall be scheduled to take place within thirty (30) working days of the request, but may be delayed for good cause. At the hearing, the district administrator's office, regional center director's office or other department designee shall present evidence to support its substantiated charge(s). The provider and/or perpetrator may submit comments or present evidence to show why the decision of the district administrator's office, regional center director's office or other department designee should be modified or overruled.

(B) The hearings administrator or designee may obtain additional information from department employees.

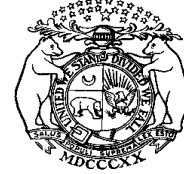
(C) The perpetrator, the determiner, the provider and the district administrator's office, regional center director's office or other department designee shall be notified in writing of the hearings administrator's or designee's decision within fourteen (14) working days of the appeal hearing. Notice of the final decision shall be provided to the perpetrator by certified mail.

(D) If the charge is upheld by the hearings administrator's or designee's decision, and complies with criteria in subsections (8)(A) and (B) of this DOR, the



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investigations unit shall place the perpetrator's name on the department's Disqualification Registry pursuant to Section 630.170 RSMo.

(8) If the department substantiates one or more of the following charges against the perpetrator, he/she shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department:

(A) Class I neglect, misuse of funds/property, physical abuse or sexual abuse; or

(B) Two (2) counts of verbal abuse, or two (2) counts of class II neglect, or one (1) count of verbal abuse and one (1) count of class II neglect, within a twelve (12) month period.

(9) After the investigation is completed, and after the effective date of any disciplinary action, the district administrator's office, regional center director's office or other department designee shall notify: the parent(s) of a minor consumer; a consumer's legal guardian(s); or a consumer who is their own guardian of the findings of the investigation, a summary of the facts and circumstances and actions taken, except that the names of any employees or other consumers shall not be revealed.

(10) All plans of action or correction shall be entered into EMT within ten (10) working days of the determination.

(11) All investigative materials (including final reports) shall be confidential, except as otherwise provided for in this DOR or by statute.

(A) Final investigative reports of substantiated abuse or neglect shall be released as follows:

1. The consumer who has not been adjudged incapacitated under Chapter 475, RSMo, the custodial or guardian parents or other guardian of the consumer who is the subject of such report may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and other descriptive information of the complainant, witnesses, or other persons against whom findings of abuse or neglect are not made.

2. The public may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and all other identifying information,

including diagnosis and treatment information, about the consumer who is the subject of the report. The names and other descriptive information of the complainant, witnesses, or other persons against whom findings of abuse or neglect are not made shall also be redacted.

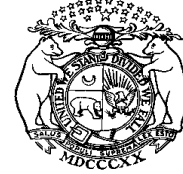
(B) Final investigative reports of unsubstantiated abuse or neglect shall be released as follows:

1. The consumer who has not been adjudged incapacitated under Chapter 475, RSMo, the custodial or guardian parents or other guardian of the consumer who is



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the subject of such report, and the department vendor, provider, agent or facility where the consumer was receiving services at the time of unsubstantiated abuse or neglect may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and other descriptive information of the complainant, witnesses, or other persons mentioned in the report.

(C) Requests for final investigative reports received from consumers who have not been adjudged incapacitated under Chapter 475, RSMo, may be denied if the director of the department or his or her designee determines that such release would jeopardize the consumer's therapeutic care, treatment, habilitation, rehabilitation, or the safety of others. If the request is denied, the reasons for the denial shall be submitted to the consumer in writing and documented in the consumer's chart.

(D) Requests for release of the investigative report not applicable to section (A) or (B) shall be submitted by the investigations unit to the Office of General Counsel for their review and advice.

(E) The investigative report shall be admissible in any judicial proceeding or hearing in accordance with section 36.390, RSMo, or any administrative hearing before the director of the department or director's designee.

(F) The investigative report shall not be placed in the consumer record.

(12) State operated facility employees shall cooperate fully with law enforcement, other department employees or employees from other agencies authorized to investigate a complaint. Failure to cooperate may result in dismissal of the employee.

(13) State operated facility employees shall forfeit their positions as set out in section 36.410 RSMo if they willfully refuse or fail to appear, or having appeared shall refuse to testify or answer questions before the investigator or the head of the facility during the investigation.

(14) No director, supervisor, or employee of a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident, consumer, or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of consumer abuse or neglect. Penalties for retaliation may be imposed up to and including cancellation of agency contracts and/or placement of individual on the DMH Employee Disqualification Registry.



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HISTORY: Original DOR effective May 1, 1983. Amendment effective May 1, 1984. Amendment effective July 1, 1996. Amendment effective July 1, 2002. Amendment effective December 30, 2003. Emergency amendment effective September 16, 2005. Amendment effective March 1, 2007. Amendment effective August 28, 2007.

References:

1. Sections 36.390; 630.167, 630.168, 630.170 RSMo.
2. 9 CSR 10-5.200